HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (M) NO. 47 OF 2005.
IN
FAMILY COURT APPEAL NO. 43 OF 1996.

Abhyajkumar M. Lale ..Applicant.
Versus.
1. Archana A. Lale
2. Ajaswini A. Lale ..Respondents.

Mrs. Vasundhara Deshpande for the applicant.

Mrs. A.S.Malavankar the respondent No.1.

Respondent No.2 in person.

CORAM: S.B.MHASE &
D.B.BHOSALE, JJ.

DATE: MARCH 22, 2005.

P.C.

1. Heard Learned counsel for the applicant - husband and learned counsel for the respondent No.1- wife.

The respondent No.2 is present in person.

2. This is civil application moved by the appellant - husband for modification of the interim order which was passed by this Court on 12th October 2000. By the said order, this Court had directed the husband to pay maintenance to the wife at the rate of Rs.1,200/- per month and Rs.600/- per month to each of the daughters. Thus, the total maintenance amount granted was Rs.2,400/- per month for the wife and two daughters. The modification of the

said order is being sought on the ground that the applicant has now retired from the service and as a result of the volutary retirment taken by him his salary is reduced. It is submitted that at the time of retirement his basic salary was Rs.13,750/- per month. On voluntary retirement, it is submitted that the applicant has received an amount of Rs. 6 lacs which he has invested in fixed deposits and he is pulling on his family on the income of the said amount. It is submitted that due to the age he is now not capable to take another employment. It is submitted that the applicant is of 59 years of age as on today. Today, he is present in the court.

3. The second ground on which the modification is sought is that the daughter - Angha has now become major and she has got married on 8.1.2004, therefore, her maintenance amount may be cancelled. The third ground made out is that another daughter, namely, Ajaswini has also become major and she has started to work in the T.V. serials. Therefore, her maintenance amount may also be cancelled.

4. The respondents have appeared in the matter. It is admitted that one daughter - Angha has got married as contended by the applicant. However, so far as the another duaghter - Ajaswini is concenred, it is submitted that she has become major, however, she is dependent on the

maintenance amount given by the father and she is not engaged in any T.V. serials and she does not have any independent income.

5. The wife has also submitted that she is not having any indepdent income but she is dependent upon the amount of maintenance which she receives from the husband.

6. What we find is that in order to support the contention of the applicant, the applicant has not produced any material on record to demonstrate that the wife is otherwise working or she is carrying on tailoring business. But for the bare words the applicant could not make any progress in the case. So far as the daughter - Ajaswini-Respondent No.2 is concerned, no doubt she has become major but she is yet dependent and she has no indepednet source of income, as stated on the affidavit. The contention is that the provisions of the Hindu Adoption and Maintenance Act are applicable only till the daughter acquires the majority. However, we are not inclined to grant modificaiton in the maintenance amount which is being given to the daughter - Ajaswini, because under the provisions of Hindu Adoption and Maintenance Act, till daughter gets married or employed the father is under obligation to pay maintenance to the major dependent daughter. Sicne in the present case the respondent No.2 is major dependent daughter, her maintenance order cannot be

cancelled.

7. So far as the wife is concenred, she is entitled to get the maintenance. Ultimately the submission is made that in view of the reduction of the salary as a result of the obtaining of the Volutary Retirement by the husband, it has become very diffuclt for the applicant to maintain the second wife and son born out of the second marriage along with the present respondent Nos. 1 & 2. We would like to mention that as against the decree of dissolution of marriage passed against the first wife the appeal is filed in this court and the same is pending. In such circumstances, the husband - applicant has carried out second marriage. This also pursuads us not to interefere in the order of maintenance. We make it clear that we do not express our opinion on the merits of the case.

8. The amount of maintenance of Rs.1200/- per month in favour of the wife and Rs.600/- in favour of the daughter - respondent No.2 is, in fact, taking into considration now-a-days standard of living and price index is just an amount sufficient to meet the bare necessities and under the law, the maintenance contemplates the minimum bare necessities to be provided by the husband. The husband, apart from having fixed deposits made from the amount he had recieved from the volutantary retirement scheme is a bodily able person who is under obligation to

provide maintnenace. Ultimately we find that there is no subtance in the application so far the modifcation in respect of the maitnentenance amount of the respondent Nos.1 & 2 are concenred. So far as the major married daughter is concerned the order of maintenance is required to be modified. Therefore we pass the following order.

O R D E R.

1. The application is partly allowed.

2. The order of maintenance in favour of the respondent Nos. 1 & 2 stands as it is.

3. So far as the order of maintenance in favour of the married daughter - Angha is concerned it stands cancelled from the date of the applicaiton.

4. Application is accordingly disposed off.

(D.B.BHOSALE,J.) **(S.B.MHASE, J.)**

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